

Case Summary

Samuel Luckett appeals the revocation of his probation. We affirm.

Issues

Luckett raises two issues on appeal, which we restate as:

- I. whether there was sufficient evidence to revoke his probation; and
- II. whether the probation revocation proceeding violated his due process rights.

Facts

On December 1, 2005, Luckett pled guilty to Class C felony carrying a handgun without a license. The trial court sentenced Luckett to six years, four executed and two suspended on probation. Luckett began his probation on April 25, 2007. On January 1, 2008, Luckett had an altercation with his former girlfriend, A.S., and the police were called. Luckett was at A.S.'s house to end the relationship because his probation officer advised he should stay away from her, based on the couple's troubled history. The discussion escalated to a physical fight. The evidence supporting the probation revocation showed that Luckett dragged A.S. down the sidewalk by her hair, punched her three times, and knocked her to the ground. Luckett was arrested and the probation department filed a petition to revoke his probation the next day.

On February 12, 2008, the trial court held a probation revocation hearing. Timothy Hughes, one of the officers who responded to the scene of the altercation, testified. He observed that A.S. was crying, nervous, and appeared scared. Her clothes were dirty and wet and "soiled as if she had been on the ground recently." Tr. p. 5. She

also had minor cuts on her forearms. A neighbor, Tanya Gibson, testified that one of A.S.'s children knocked on her door and when she came outside she witnessed Luckett and his sister dragging A.S. on the sidewalk by her hair. After Luckett and his sister got in a car to leave, A.S. opened the car door and demanded the return of her cell phones. Luckett punched her in the face three times and she fell down. Luckett stated to another officer that A.S. "went crazy" and "attacked him." Id. at 16. The trial court concluded that Luckett violated his probation by battering A.S. and ordered him to serve the remainder of his sentence in the Department of Correction. This appeal followed.

Analysis

I. Sufficiency of the Evidence

Luckett argues that the State presented insufficient evidence to support the trial court's finding that he violated probation. As with other sufficiency questions, we neither reweigh the evidence nor judge the credibility of witnesses. Whatley v. State, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006). When the alleged probation violation is the commission of a new crime, the State does not need to show that the probationer was convicted of that crime. Id. An alleged violation of probation only has to be proven by a preponderance of the evidence, because a probation revocation hearing is a quasi-civil proceeding. Id.

Luckett argues that insufficient evidence existed to support a finding that he battered A.S. In its petition to revoke probation, the State alleged that Luckett "knowingly or intentionally touched [A.S.] in a rude, angry, or insolent manner causing pain." App. p. 150. Luckett contends that there was not evidence that he caused her

pain. This element is not necessary, however, for the offense of battery. “A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner” commits the offense of battery. Ind. Code § 35-42-2-1(a).

Testimony indicated that Luckett dragged A.S. by her hair and that he punched her in the face three times. These actions constituted intentional touches in an insolent and angry manner and likely caused physical pain to A.S. Luckett implies that the trial court could not make such a finding without A.S.’s direct testimony, but her testimony is not necessary. See Baltimore v. State, 878 N.E.2d 253, 258 (Ind. Ct. App. 2007) (“A conviction may be sustained on the uncorroborated testimony of a single witness or victim.”) (emphasis added), trans. denied. Gibson testified that she saw Luckett drag A.S. and punch her three times. Officer Hughes testified that A.S. was dirty and wet, as if she had been on the ground and that she had scratches on her forearms. The State presented sufficient evidence to show that Luckett committed a crime in violation of his probation.

Luckett also argues his defense of self-defense was not adequately refuted by the State’s witnesses. Luckett testified that A.S. struck and scratched him and he was merely defending himself.¹ He denied punching her. The trial court was in the best position to assess the credibility of the witnesses and did not give Luckett’s testimony much weight. We do not reweigh the evidence or judge the credibility of witnesses on appeal.

¹ Pictures taken that day and admitted into evidence show scratches on Luckett’s face.

Once a defendant claims self-defense, the State bears the burden of disproving the claim. Pinkston v. State, 821 N.E.2d 830, 842 (Ind. Ct. App. 2004), trans. denied. “The State may satisfy its burden by either rebutting the defense directly or relying on the sufficiency of evidence in its case-in-chief.” Id. “A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.” I.C. § 35-41-3-2(a). However, a person is not justified in using force when he or she “has entered into combat with another person or is the initial aggressor unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.” I.C. § 35-41-3-2(e)(3).

The evidence that Luckett was dragging A.S. by her hair does not support any finding of self-defense on his part. Testimony indicated that after that confrontation, A.S. approached Luckett’s car and opened the door demanding the return of her cell phones. Instead of leaving, Luckett punched her three times, knocking her to the ground. Sufficient evidence existed for the trial court to find that Luckett was not acting in self-defense when he battered A.S. in violation of the terms of his probation.

II. Due Process Violation

Luckett argues that his due process rights were violated because he did not have an opportunity to confront and cross-examine A.S. A defendant in a probation revocation proceeding is not entitled to the full due process rights that would be entitled to a defendant in a criminal proceeding. Terrell v. State, 886 N.E.2d 98, 100 (Ind. Ct. App.

2008) (internal citations omitted). The due process requirements for probation revocation hearings mandate that an evidentiary hearing be held and the defendant be provided counsel and an opportunity to confront and cross-examine witnesses. I.C. § 35-38-2-3(d) and (e). Luckett did have ample opportunity to cross-examine all the witnesses and even to testify himself. A.S. did not appear and did not testify, nor was she required to do so. See Baltimore, 878 N.E.2d at 258 (circumstantial evidence can support a conviction). Luckett's arguments regarding any right to confront A.S. are misplaced.

Luckett also argues that "the allowable hearsay testimony from the remaining state's witnesses taints the true facts and circumstances surrounding the incident." Appellee's Br. p. 16. The brief does not include cites to any specific passage or statement that constitutes hearsay testimony. Nor does the transcript reveal any hearsay objections by Luckett during the proceedings. Any arguments implying improper hearsay testimony are waived for failure to cite the record on appeal and failure to object. See Davis v. State, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (issued waived for appeal where party failed to cite the record or authority to support its argument), trans. denied; Marsh v. State, 818 N.E.2d 143, 145 (Ind. Ct. App. 2004) (holding the defendant waived the issue of hearsay testimony of the victim where she failed to object during probation revocation proceeding). Waiver notwithstanding, even if testimony of the other witnesses included hearsay statements, our supreme court has held that during probation revocation proceedings "judges may consider all relevant evidence bearing some substantial indicia of reliability. This includes reliable hearsay." Cox v. State, 706

N.E.2d 547, 551 (Ind. 1999). We conclude that Lockett's due process rights were not violated.

Conclusion

The trial court had sufficient evidence to conclude that Lockett battered A.S. and to revoke his probation. Lockett's due process rights were not violated during the probation revocation proceeding. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.